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September 18, 2013

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Re: Case Name : *Junod v. Mortgage Electronic Registration Systems, Inc., et al.*
Case No. : 12-55712

RE: Response to Appellants letter dated September 3, 2013

Dear Ms. Dwyer :

Pursuant to FRAP Rule 28(j) Appellees submit this letter brief in response to Appellants' letter brief dated September 3, 2013.

In their letter, Appellants argue that *Glaski v. Bank of America, N.A.* (2013) 218 Cal.App.4th 1079 (5th District) controls and requires that their claims be allowed to proceed. However, Appellants ignore two other recent, published cases--*Jenkins v. JP Morgan Chase Bank, N.A.* (2013) 216 Cal.App.4th 497, (Fourth District) and *Siligas v. Mortgage Electronic Registration Systems, Inc.*, 2013 WL 4522474 (August 27, 2013 (Second District) which come to the opposite conclusion from *Glaski*.

In *Jenkins*, the court held: "an unrelated third party to the alleged securitization, and any other subsequent transfers of the beneficial interest...lacks standing to enforce any agreements, including the investment trust's pooling and servicing agreement, relating to such transactions." [supra at 515] The Jenkins Court also rejected the post-closing date theory of invalidity holding that the borrower is not the victim because the borrower's "obligations under the remained unchanged. Id. In *Siligas*, the court went on to also reject

Molly C. Dwyer, Clerk of the Court
The James R. Browning Courthouse
U.S. Court of Appeals
September 18, 2013
Page 2

the sufficiency of a factually unsupported challenge to the assignment of the promissory note as it “amounts to a preemptive claim seeking to require the foreclosing party to demonstrate in court its authority to initiate a foreclosure....” [*Siligas*, at *5].

Contrary to Appellants’ letter, *Glaski* is not a decision of the highest court in California; rather it is a co-equal court (Fifth District) to the courts in Jenkins (Fourth District) and *Siligas* (Second District). Absent a higher court decision, federal courts applying state law generally must follow the decisions of the intermediate state appellate courts (unless there is convincing evidence that the highest court of the state would decide differently). *Klein v. City of San Clemente*, 584 F.3d 1196, 1206 (9th Cir. 2009) citing *Briceno v. Scribner*, 555 F.3d 1069, 1080 (9th Cir. 2009). However, where the intermediate courts disagree, the federal courts should rely on the better reasoned decision—here, those in *Jenkins* and *Siligas*. See *Froyd v. Crook*, 681 F.Supp. 669, 672 at n.9 (E.D. Cal. 1988).

Sincerely,

WRIGHT, FINLAY & ZAK, LLP



Magdalena D. Kozinska, Esq.

MDK;jlh

cc: DeborahP.Gutierrez,Esq.